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H.653

Introduced by Representative Buxton of Tunbridge

Referred to Committee on

Date:

Subject: Health; health insurance; vision plans; optometrists

Statement of purpose of bill as introduced: This bill proposes to regulate vision insurance plans as health insurance. It would impose several requirements on vision care plans in their contracts with plan enrollees and in their financial arrangements with optometrists and ophthalmologists. It would also create a private right of action for anyone adversely affected by a violation of the provisions of the bill.

An act relating to the regulation of vision insurance plans

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 8 V.S.A. § 3301(a) is amended to read:

(a) Subject to the additional or varied requirements stated in this subchapter, a corporation may be formed pursuant to the general corporation law to do any and all insurance and reinsurance comprised in any one of the following numbered subdivisions:

\* \* \*



1 of medicine, optometry, and osteopathy, regardless of whether the health care  
2 professional is an optometrist or an ophthalmologist.

3 (d)(1) A health insurer shall permit a licensed optometrist to participate in  
4 plans or contracts providing for vision care or medical eye care to the same  
5 extent as it does an ophthalmologist.

6 ~~(2) A health insurer shall not require a licensed optometrist or  
7 ophthalmologist to provide discounted materials benefits or to participate as a  
8 provider in another medical or vision care plan or contract as a condition or  
9 requirement for the optometrist's or ophthalmologist's participation as a  
10 provider in any medical or vision care plan or contract.~~

11 ~~(e)(1) An agreement between a health insurer or an entity that writes vision  
12 insurance and an optometrist or ophthalmologist for the provision of vision  
13 services to plan members or subscribers in connection with coverage under a  
14 stand-alone vision plan or other health insurance plan shall not require that an  
15 optometrist or ophthalmologist provide services or materials at a fee limited or  
16 set by the plan or insurer unless the services or materials are reimbursed as  
17 covered services under the contract.~~

18 (2) An optometrist or ophthalmologist shall not charge more for services  
19 and materials that are noncovered services under a vision care plan than his or  
20 her usual and customary rate for those services and materials.

1           ~~(3) Reimbursement paid by a vision plan for covered services and~~  
2           ~~materials shall be reasonable and shall not provide nominal reimbursement in~~  
3           ~~order to claim that services and materials are covered services.~~

4           (f) In addition to the enforcement authority available to the Commissioner  
5           of Financial Regulation under this title, any person adversely affected by a  
6           violation of this section may bring an action in Vermont Superior Court against  
7           the health insurer or vision care plan for injunctive relief and damages of up to  
8           \$1,000.00 per day in violation, as well as reasonable costs and attorney's fees.

9           (g) As used in this section:

10           (1) "Covered services" means services and materials for which  
11           reimbursement from a vision care plan or other health insurance plan is  
12           provided by a member's or subscriber's plan contract, or for which a  
13           reimbursement would be available but for application of the deductible,  
14           co-payment, or coinsurance requirements under the member's or subscriber's  
15           health insurance plan.

16           (2) "Health insurance plan" means any health insurance policy or health  
17           benefit plan offered by a health insurer or a subcontractor of a health insurer,  
18           as well as Medicaid and any other public health care assistance program  
19           offered or administered by the State or by any subdivision or instrumentality of  
20           the State. The term includes vision care plans but does not include policies or

1 plans providing coverage for a specified disease or other limited benefit  
2 coverage.

3 (3) "Health insurer" shall have the same meaning as in 18 V.S.A.  
4 § 9402.

5 (4) "Materials" includes lenses, devices containing lenses, prisms, lens  
6 treatments and coatings, contact lenses, and prosthetic devices to correct,  
7 relieve, or treat defects or abnormal conditions of the human eye or its adnexa.

8 (5) "Ophthalmologist" means a physician licensed pursuant to 26 V.S.A.  
9 chapter 23 or an osteopathic physician licensed pursuant to 26 V.S.A.  
10 chapter 33 who has had special training in the field of ophthalmology.

11 (6) "Optometrist" means a person licensed pursuant to 26 V.S.A.  
12 chapter 30.

13 (7) "Vision care plan" means an integrated or stand-alone plan, policy,  
14 or contract providing vision benefits to enrollees with respect to covered  
15 services or covered materials, or both.

16 Sec. 3. 8 V.S.A. § 4088k is added to read:

17 § 4088k. VISION CARE PLANS

18 (a) Definitions. As used in this section:

19 (1) "Covered services" means services and materials for which  
20 reimbursement from a vision care plan or other health insurance plan is  
21 provided by a member's or subscriber's plan contract, or for which a

1 reimbursement would be available but for application of the deductible,  
2 co-payment, or coinsurance requirements under the member's or subscriber's  
3 health insurance plan.

4 (2) "Enrollee" means a person covered by a vision care plan or health  
5 insurance plan.

6 (3) "Health insurance plan" means any health insurance policy or health  
7 benefit plan offered by a health insurer or a subcontractor of a health insurer,  
8 as well as Medicaid and any other public health care assistance program  
9 offered or administered by the State or by any subdivision or instrumentality of  
10 the State. The term includes vision care plans but does not include policies or  
11 plans providing coverage for a specified disease or other limited benefit  
12 coverage.

13 (4) "Health insurer" shall have the same meaning as in 18 V.S.A.  
14 § 9402.

15 (5) "Materials" includes lenses, devices containing lenses, prisms, lens  
16 treatments and coatings, contact lenses, and prosthetic devices to correct,  
17 relieve, or treat defects or abnormal conditions of the human eye or its adnexa.

18 (6) "Ophthalmologist" means a physician licensed pursuant to 26 V.S.A.  
19 chapter 23 or an osteopathic physician licensed pursuant to 26 V.S.A.  
20 chapter 33 who has had special training in the field of ophthalmology.

1           (7) “Optometrist” means a person licensed pursuant to 26 V.S.A.  
2           chapter 30.

3           (8) “Vision care plan” means an integrated or stand-alone plan, policy,  
4           or contract providing vision benefits to enrollees with respect to covered  
5           services or covered materials, or both.

6           (9) “Vision care provider” or “provider” means an ophthalmologist or  
7           optometrist.

8           (b) Vision care plan requirements with respect to providers. A health  
9           insurer or vision care plan shall:

10           (1) Reimburse covered services and materials at a reasonable amount  
11           and shall not provide nominal reimbursement in order to claim that services  
12           and materials are covered services.

13           (2) Provide a vision care provider with a new contract at least once in a  
14           24-month period.

15           (3) Treat all providers equally in a print or online directory. Printed  
16           directories shall list all providers according to geographic location. Online  
17           directories shall allow enrollees to prioritize search results based on the  
18           enrollee’s input address. The directory shall provide an accurate listing of a  
19           provider’s services available at each location.

20           (c) Vision care plan prohibitions with respect to providers. A health  
21           insurance or vision care plan shall not:

1           (1) Require a licensed optometrist or ophthalmologist to provide  
2           discounted materials benefits or to participate as a provider in another medical  
3           or vision care plan or contract as a condition or requirement for the  
4           optometrist's or ophthalmologist's participation as a provider in any medical or  
5           vision care plan or contract.

6           (2) Require that an optometrist or ophthalmologist provide services or  
7           materials at a fee limited or set by the plan unless the services or materials are  
8           reimbursed as covered services under the contract.

9           (3) Make any amendments, including changes to discounts, fee  
10          schedules, or provider reimbursement rates, to the contract, provider manual,  
11          or other document governing the relationship between a vision care plan and a  
12          vision care provider without providing at least 90 days' written notice to the  
13          provider and obtaining a signed acknowledgment from the provider accepting  
14          the changes.

15          (4)(A) Restrict, penalize, coerce, compel, threaten, undermine, or  
16          otherwise limit, directly or indirectly, a vision care provider's choice of and  
17          relationship with sources and suppliers of services or materials or use of  
18          optical laboratories. The plan shall not impose any penalty or fee on providers  
19          for using a supplier, optical laboratory, product, service, or material of the  
20          provider's choice.

1           (B) Restrict, penalize, coerce, compel, threaten, undermine, or  
2           otherwise limit, directly or indirectly, a contracted optical laboratory's choice  
3           of and relationship with providers and with sources and suppliers of services or  
4           materials. The plan shall not require a contracted optical laboratory to  
5           maintain a specific product or material in the laboratory's inventory at all times  
6           if the laboratory cannot, despite good faith efforts, obtain the product in time to  
7           meet production schedule specified in the contract.

8           (5) Compel, discriminate, or threaten a provider to engage a vision care  
9           benefit when engagement of a medical health insurance benefit is most  
10           appropriate. The health insurance or vision care plan shall allow the vision  
11           care provider to determine which benefit is appropriate and shall not represent  
12           to enrollees prospectively which benefit will be engaged for a particular  
13           service.

14           (6) Require a provider to accept multiple fee schedules, plans, or  
15           sub-plans as a condition or requirement of the provider's participation in any  
16           health insurance or vision care plan or contract.

17           (7) Unless otherwise required by law, communicate with an enrollee in a  
18           manner that interferes with or contravenes any State or federal requirement or  
19           provider-patient relationship in existence at the time of the communication.

20           (8) Prohibit a provider from selling contact lenses, prescription lenses,  
21           eyewear, or other materials that the plan also sells, or contractually control or

1 mandate a discount on a provider's price for contact lenses, prescription lenses,  
2 eyewear, or other materials when the plan competes with the provider by also  
3 selling those products.

4 (d) Vision care plan requirements with respect to enrollees. A health  
5 insurer or vision care plan shall:

6 (1) On or before March 1 of each year, provide each enrollee with an  
7 annual summary of the premium amounts paid to the plan by the enrollee  
8 personally or on the enrollee's behalf by his or her employer during the  
9 previous calendar year, as well as an annual summary of all payments made by  
10 the plan on the enrollee's behalf for services and materials rendered to the  
11 enrollee during the previous calendar year. For employer-sponsored plans, the  
12 plan shall also provide each employer with an annual summary of all premium  
13 amounts paid to the plan by the employer and its employees, as well as the  
14 total amount of payments made by the plan on behalf of the employer's  
15 employees for services and materials rendered to the employees during the  
16 previous calendar year.

17 (2) Participate in the coordination of benefits between a health insurer  
18 and a vision care plan when the services provided to an enrollee are both  
19 medical and vision-related in nature. Each health insurer or vision care plan  
20 shall pay the provider the contracted amount for its respective services,  
21 provided that the total amount paid by all plans for the specific patient

1 encounter shall not exceed the provider's usual and customary charges for all  
2 of the services provided.

3 (3) Provide enrollees with out-of-network benefits, which shall comprise  
4 at least 50 percent of the plan's in-network benefit for the same services and  
5 materials. The plan shall provide full disclosure of its policies and procedures  
6 for out-of-network benefits to enrollees and providers.

7 (4) Provide a fixed material benefit for enrollees, which shall be  
8 described as a dollar amount and which the enrollee may use toward any  
9 materials covered by the plan.

10 (5) Allow material benefits to be independent, and not require enrollees  
11 to purchase certain materials in order to use their plan benefit toward other  
12 materials.

13 (e) Enforcement. In addition to the enforcement authority available to the  
14 Commissioner of Financial Regulation under this title, any person adversely  
15 affected by a violation of this section may bring an action in Vermont Superior  
16 Court against the health insurer or vision care plan for injunctive relief and  
17 damages of up to \$1,000.00 per day in violation, as well as reasonable costs  
18 and attorney's fees.

19 Sec. 4. EFFECTIVE DATE

20 This act shall take effect on July 1, 2016 and shall apply to all health  
21 insurance and vision care plans on such date as a health insurer or other

1 insurance provider issues, offers, or renews the plan, but in no event later than  
2 July 1, 2017. The act shall apply to all new and renewal provider contracts  
3 entered into on or after July 1, 2016.